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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/151,300 09/11/98 KIRCHGEORG

J A7205

QM12/0321
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WASHINGTON DC 20037-3202

EXAMINER
SCHAETZLE, K

ART UNIT	PAPER NUMBER
3762	

DATE MAILED: 03/21/01

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary**Application No.**

09/151,300

Applicant(s)

KIRCHGEORG ET AL.

Examiner

Schaeztle Kennedy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2000.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2,5,15 and 17-26 is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6 and 14 is/are rejected.
- 7) ☒ Claim(s) 7-13 and 16 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s): _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 20) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Rubin (Pat. No. 4,257,415).

The examiner considers the disposable unit vial containers 14 which contain medication to constitute "additional medical equipment."

The examiner also considers air to comprise breathable oxygen. The applicants should also note col. 1, line 14.

Regarding claim 3, template 13 and body 10 show an outer casing utilizing first and second openings defined by the template and covered by cover 11.

3. Claims 1, 4 and 14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Klatz et al. (Pat. No. 5,653,685).

Klatz et al. do not explicitly refer to the use of at least one cover for covering at least one opening in the outer casing. The outer casing is, however, referred to as a suitcase-like device which implies that it contains an opening covered by a cover --a feature that all suitcases have. In any event, to provide such a feature would have been considered blatantly obvious by ordinarily skilled artisans in order to allow access to the equipment located inside.

The examiner considers the additional medical equipment to include the filtration unit used to treat spent solution, or the waste conduit/opening used to expel bodily fluids, tissue particulates or other materials. Furthermore, Klatz et al. teach that a tracheostomy may be performed with a McSwain dart or other similar emergency medical instruments (col. 6, lines 28-40). To include

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such necessary instruments into a single case would have been seen as an obvious mechanical expediency to those of ordinary skill in the art, much like a first aid kit would contain antiseptic and Band-Aids in the same housing.

Regarding claim 4, Klatz et al. teach to include a display 56 and oximetry sensor (see col. 7, lines 50-59) in the medical system.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klatz et al. in view of Rubin.

Klatz et al. do not explicitly refer to the use of first and second compartments. Klatz et al. show the use of a template 13 fully enclosing body section 10 with multiple compartments to hold internal equipment steadfast. Such an arrangement helps to protect the components of portable systems which are subject to jostling about. Any artisan concerned with enhancing the durability of the portable emergency device of Klatz et al. would have therefore seen the obviousness of employing at least first and second compartments.

Allowable Subject Matter

6. Claims 7-13 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 2, 5, 15 and 17-26 are allowed.

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There does not appear to be a teaching in the prior art of record for incorporating the recited first and second covers (claim 2) which allow access to individual components of the system.

There is no teaching in the prior art of record for combining a defibrillator with a breathable oxygen delivery system in a unitary, hand-held, portable housing. Andrews et al. show the two systems employed in a single portable unit, but the device is not considered to be hand-held in view of the applicant's comments (the examiner will consider the term *hand-held* to be limited to devices of a size and weight which can be easily carried by a single hand). Nor does there appear to be a suggestion for adding a defibrillator to the portable, hand-held oxygen delivery systems of Rubin and Anderson. Such systems are disclosed as being used in conjunction with the treatment of respiratory diseases such as asthma, and are made lightweight so as to allow easy portage by the patient (note col. 1, lines 45-68 of Rubin). To a person in cardiac arrest, the defibrillator would be useless since the victim would not be able to operate it for obvious reasons. In a breathable oxygen delivery system which can be employed to rescue a person suffering from cardiac arrest, Klatz et al. discourage the use of electroshock therapy (note col. 1, lines 39-51). Barkalow et al. show both a ventilator and a defibrillator in use, but do not disclose if the defibrillator and ventilator are combined in a single unit.

Response to Arguments

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

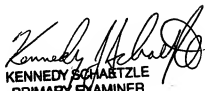
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ken Schaeztle whose telephone number is (703) 308-2211. The examiner can normally be reached on Mondays through Fridays from 9:30 to 6:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached at (703)308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


KENNEDY SCHAEZTLE
PRIMARY EXAMINER
March 13, 2001